

#11/Election  
12-73-72  
R. Durbin

IN THE US PATENT AND TRADEMARK OFFICE

Application Number: 09/812,066  
Agent's Docket Number: ONX-108/CIP  
5 Filing Date: March 17, 2001  
Applicant: Behrang Behin et al.  
Application Title: Three Dimensional Optical Switches and Beam Steering Modules  
Examiner: Rickey L. Mack  
10 Art Unit: 2873

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Joshua D. Isenberg  
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**ELECTION/RESTRICTION RESPONSE**

15 Commissioner of Patents and Trademarks  
Washington, DC 20231

Sir:

20 In response to the Election/Restriction Requirement Mailed August 27, 2002, kindly consider the following Remarks.

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**REMARKS**

**ELECTION/RESTRICTION REQUIREMENT**

25 The Examiner has required election of claims directed to one of the following species under 35 U.S.C. § 121:

Group I: Claims 1-100, directed to a species as depicted in at least Figs. 14-16; and

30 Group II: Claims 101-117, directed to a species having first and second curved surfaces as depicted in at least Figs. 17-19.

The Applicant hereby provisionally elects Group I, claims 1-100, with traverse.

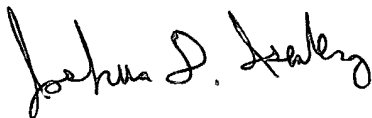
5 The Applicant traverses the requirement on the grounds that it is improper since the Examiner has not met his burden under MPEP 816 to give reasons for his holding of distinctness. The Examiner has set forth only a conclusion that the two species are distinct and has set forth no particular reasons that he has relied on in holding that the two species are patentably distinct. MPEP 816 clearly states, "[a] mere statement of conclusion is inadequate." In the absence of such a statement, the Applicant respectfully requests that the Examiner withdraw the election requirement.

CONCLUSION

10 The applicants respectfully request that the Examiner withdraw the restriction requirement, consider the application and point out the allowable subject matter in the next Office Action.

Respectfully submitted,

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Date: Nov. 26, 2002

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